IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4592 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAULIK @ PAPPU JAGDISHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/01/2000

ORAL JUDGEMENT

#. Heard Ms.Subhadra Patel, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 15-4-1999 passed by

respondent No.2 - The Commissioner of Police against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu, a copy of which is produced at Annexure-B interalia indicate that the prohibition case bearing C.R.No : 5023 of 1999 was registered against the petitioner / detenu on 10-4-99 at Ghatalodia police station and Indian made foreign liquor was seized from the possession of the detenu. That the detenu was arrested and was in judicial custody.

#. The grounds also indicate that two witnesses on assurance of their anonymity have given statement dated 13-4-99 and 14-4-1999 respectively against the prejudicial activities of the petitioner which pertains to the incidents dated 25-3-99 and 27-3-99 respectively.

#. On the basis of the aforesaid material, respondent No.2 has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law not being sufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It is contended at bar on behalf of the petitioner that on the date of passing of the the impugned order that at the relevant time, the petitioner was in judicial custody. The detaining authority has failed to consider the less drastic remedy of opposing the bail or claim of cancellation of bail if granted, which discloses non application of mind and has vitiated the subjective satisfaction, thereby impugned order is bad in law.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, the detaining authority has observed in the grounds of detention that though the detenu is in judicial custody, he is likely to apply for bail and having himself got released on bail, is likely to continue his anti social activities. The said observations suggest that the impugned order is passed only on the basis of the apprehension and not on the basis of the subjective satisfaction. That non consideration of the less drastic remedy is also apparent and as such, the impugned order is bad in law on account of non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of discussions as aforesaid the petition is allowed. The detention order dated 15-4-1999 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 11-1-2000 [A.K.Trivedi, J.]

#kailash#